

APR 20 1945

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1945

No. **1142**

RUDOLPH MEJIA, ET AL.,
Petitioner,

versus

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
CIRCUIT COURT OF APPEALS FOR THE FIFTH
CIRCUIT AND BRIEF IN SUPPORT THEREOF.

M. A. GRACE,
EDWIN H. GRACE,
Attorneys for Petitioners.

I N D E X

	Page
Petition for writ of certiorari	1-7
Jurisdiction	2
Opinions Below	2
Summary Statement	2
Questions Presented	4
(1) Should not words "damages caused by a public vessel of the United States" as used in Public Vessels Act,, 46 U.S.C.A. be interpreted as including damages for death on navigable waters of state as result of collision between public vessel of the United States and a privately owned vessel	2, 4
(2) Does Public Vessel Act create liability for death or is that right solely created by State statute	4
(3) Does 2 year provision for filing suits against United States control or does provision of State Statute govern	4
(4) If petitioners' rights extinguish as Circuit Court of Appeals held whether petitioners delay in filing suit should be exercised on ground pleaded	5
Reasons for granting writ	5-7
(1) The Circuit Court of Appeals has decided a question of general importance relating to the construction of federal statute	5
(2) Decision below in conflict with earlier decisions in First and Second Circuit	5
(3) Decision below unduly restricts the class of cases authorized by the Public Vessels Act....	5
(4) Scope of word "damages" as including death	

INDEX—(Continued)

	Page
never passed upon by this Court and it is important that this court determine its meaning	5
(5) Effect of decision below would destroy uniformity required under Public Vessels Act providing for filing of suits in admiralty	6
Brief in Support of Petition	9-14

ARGUMENT

First Point

Reference to earlier decisions of First and Second Circuit in conflict with decision below	9, 10
--	-------

Second Point

Quotation of applicable provision of Public Vessels Act	11
Quotation of applicable provisions of Suits in Admiralty Act	11

Third Point

Quotation from <i>Engel v. Davenport</i> and citation of <i>Just v. Chambers</i> , both decisions of this Court as to uniformity	13
--	----

INDEX OF CASES

<i>Dobson v. United States</i> , 55 F. 2d 674 (D. C. Mass.) affirmed on opinion below, 73 F. 2d 1016, C.C.A. 1	5, 10
<i>Engel v. Davenport</i> , 271 U.S. 33, 39	13
<i>Just v. Chambers</i> , 312 U.S. 383	14
<i>New England Maritime Co. v. United States</i> , 27 F. 2d 807, C.C.A. 2	5, 9

STATUTES

Applicable provisions of Public Vessels Act	2, 12
Applicable provisions of State in Admiralty Act	3, 12

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FIFTH CIRCUIT

To the Honorable the Chief Justice and Associate Justices
of the Supreme Court of the United States:

Petitioners, Rudolph Mejia and Elvidia Naquin, pray that a Writ of Certiorari issue to review the decision of the United States Circuit Court of Appeals for the Fifth Circuit composed of two judges filed December 28, 1945, affirming a final decree in admiralty entered in the District Court for the Eastern District of Louisiana on December 23, 1944, dismissing the libel filed under the Public Vessels Act.

JURISDICTION

Jurisdiction is based on Section 240 (a) of the Judicial Code as amended, 28 U. S. Code 347. Rehearing was denied on January 25, 1946.

OPINIONS BELOW

The opinion of the District Court (R. 9) is reported in 57 F. Supp. 1015. The opinion of the Circuit Court of Appeals (R. 27) is reported in 152 F. 2d 686.

SUMMARY STATEMENT

On February 16, 1946, or approximately sixteen months after the death of libelants two children by drowning as a result of a collision which occurred on the Mississippi River in the State of Louisiana between a privately owned vessel on which they were passengers and a public vessel of the United States, petitioners herein filed a libel against the United States of America to recover damages sustained by libelants as a result of the death of their children caused by a public vessel of the United States.

The libel was filed under the Public Vessels Act, 46 U. S. C. A. 781 *et seq.* in part providing that:

"A libel in personam in admiralty may be brought against the United States * * *, for damages caused by a public vessel of the United States * * *"

and which act by reference and insofar as the provisions thereof are not inconsistent thereunder adopts the provi-

sions of the Suits in Admiralty Act, 46 U. S. C. A. 741 *et seq.* 745, reading in part as follows:

"Suits authorized by this chapter may be brought only on causes of action arising since April 6, 1917: provided that suits based on causes of action arising prior to the taking effect of this chapter shall be brought within one year after this chapter goes into effect and all other suits hereunder shall be brought within two years after the cause of action arises * * *"

The United States appeared in the proceeding and notwithstanding that the libel was filed well within the two year limitation period of the Public Vessels Act excepted to the libel upon the sole ground that

"The right of libelants to bring this action depends solely upon a statute of the State of Louisiana, namely Article 2315 of the Civil Code,"

and urged therein that as said state statute limits the time within which said right must be exercised to one year from the time said right accrued, and as the libel was not filed within the said one year period of the state act, libelants' right was lost and did not exist when this libel was filed (R. 7).

The District Court maintained this exception and dismissed the libel. Thereupon petitioner moved to be allowed to amend its libel by setting out in said motion what it considered equitable excuses for not filing the libel within the one year period provided in the state death act namely article 2315 of the Louisiana Civil Code.

The District Judge denied petitioner the right to file the amended libel. The facts which libelant urged as constituting equitable excuse are set out in the motion to amend. (R. 8.)

The United States Circuit Court of Appeals composed of two judges affirmed the judgment of the District Court in dismissing the libel and in denying libelant petitioner herein, the right to amend. (R. 27.)

QUESTIONS PRESENTED

(1) Did Congress in passing the Public Vessels Act, 46 U. S. C. A. 781 and in providing for the filing of a libel in admiralty for damages caused by a public vessel of the United States intend that the word "damages" should be interpreted, as the Circuit Court of Appeals herein held, as not including damages for death resulting from a collision on the Mississippi River, within the state of Louisiana, between a public vessel of the United States, and a privately owned vessel, and resulting in death by drowning of two passengers on the privately owned vessel?

(2) Does the Public Vessels Act, 46 U. S. C. A. 781 create a liability for death caused by a public vessel of the United States, as in the instant case or is such liability solely created by state death statutes wherein death is so caused?

(3) Does the period of two years after the cause of action arose as provided in the Suits in Admiralty Act, 46 U. S. C. A. made applicable to the Public Vessels Act,

within which to file a libel in admiralty against the United States, apply to claims for death in admiralty caused by a public vessel of the United States, or does the time as fixed by the state statutes to file suit, control?

(4) If as the Circuit Court of Appeals held libelants rights were extinguished by the terms of the state statute * * whether petitioner's delay in bringing this admiralty suit should not have been excused on the grounds pleaded?

REASONS FOR GRANTING THE WRIT

(1) The Circuit Court of Appeals has decided a question of general importance relating to the construction of a federal statute.

(2) The decision below is in conflict with earlier decisions in the First and Second circuit in the following cases:

New England Maritime Co. v. United States, 55 F. (2d) 674 (D. C. Mass.) *affd. on opinion* below 73 F. (2d) 1016 C. C. A. 1;
Dobson v. United States, 27 F. (2d) 807 C. C. A.

(3) The decision below in holding that the Public Vessels Act does not create an action for death in admiralty has unduly restricted the class of cases in which suit against the United States is authorized by the Public Vessels Act, contrary to the plain and expressed intention of Congress.

(4) The scope of the meaning of the word "damages" as including death as used in the Public Vessels Act has

never been passed upon by this court, and it is important that this court determine the meaning of the word damages as used in said act for guidance of the inferior courts especially because of the conflict of the decision of those courts.

(5) The decision of the Circuit Court of Appeals in applying a state statute and the time limit therein contained within which suits filed under a statute granting the right to sue the United States in Admiralty for damages caused by a public vessel of the United States should be filed destroys that uniformity required in such admiralty matters wherein an exclusive federal jurisdiction is involved, and is in conflict with the principals laid down in the case of *Just v. Chambers*, 312 U. S. 383.

Wherefore petitioners respectfully pray that a Writ of Certiorari be issued out of and under the seal of this Honorable Court directed to the Circuit Court of Appeals for the Fifth Circuit commanding that court to certify and to send to this Court for its review and determination on a day certain to be named therein a full and complete transcript of the record of all proceedings of said court in the above entitled cause and that the decision of the said Circuit Court of Appeals in said case be reversed and that your petitioners have such other and further relief in the premises as may be just.

Rudolph Mejia and Elvidia Naquin,
wife of Rudolph Mejia, Petitioners

By M. A. GRACE,
EDWIN H. GRACE,
Counsel.

CERTIFICATE

I hereby certify that I have examined the foregoing petition, that in my opinion it is well founded and entitled to the favorable consideration of the Court and that it is not filed for purposes of delay.

M. A. GRACE,
Counsel,
Hibernia Bank Building,
New Orleans, Louisiana.

New Orleans, Louisiana
April 17, 1946.